

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>ISABELL GARCIA</b>	)	
Claimant	)	
	)	
VS.	)	
	)	
<b>NATIONAL BEEF PACKING CO., LP</b>	)	
Respondent	)	Docket No. <b>1,034,676</b>
	)	
AND	)	
	)	
<b>ZURICH AMERICAN INSURANCE CO.</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant requests review of the July 16, 2007 preliminary hearing Order Denying Compensation entered by Administrative Law Judge Pamela J. Fuller.

**ISSUES**

The claimant alleged she contracted Q fever and brucellosis from working at respondent's beef packing plant. The Administrative Law Judge (ALJ) found that "claimant has not shown that it is more probably true than not true that her occupational disease arose out of and in the course of employment (K.S.A. 44-5a01(b))."<sup>1</sup>

The claimant requests review of whether her occupational disease/accidental injury arose out of and in the course of her employment.

Respondent argues the ALJ's Order should be affirmed.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the whole evidentiary record filed herein, this Board Member makes the following findings of fact and conclusions of law:

---

<sup>1</sup> ALJ Order (Jul. 16, 2007).

Claimant began her employment with respondent on October 4, 2004. In July of 2006 claimant was performing the job she described as the "hot scale." Her job duties were stamping the carcass' hide, logging the lot it came from and then she would place tickets on carcasses after they had been processed and then inspected by the government. This was the job that she was performing when she got sick and she had done this job for about a year.

Claimant began having headaches, cold chills, fever, nausea, vomiting, loss of appetite, tiredness, weakness, dizziness, fatigue, achy muscles and bones. She sought treatment with her family physician, Dr. Aurora Arribas, in Dodge City, Kansas. Dr. Arribas performed an examination and recommended some tests. The doctor then referred claimant to Dr. Mahanad Bakleh. Claimant was diagnosed with brucellosis and Q fever. Claimant provided her diagnosis to the respondent but was told by Danny Briggs<sup>2</sup> that he had investigated the matter and determined her condition was not work related. The last day she worked was March 8, 2007. Claimant was taken off work by Dr. Bakleh from March 8, 2007 through May 9, 2007. She continued to treat with Dr. Bakleh and was released to return to work on May 9, 2007.

Claimant testified she was born in Texas and has lived her entire life in the United States. She further testified she has not taken a trip to Mexico or anywhere outside of the United States. And she further denied that she had ever consumed raw milk. Claimant also denied that anyone in her family had been diagnosed with either brucellosis or Q fever or that she was acquainted or associated with anyone diagnosed with those conditions. But she did mention that she had discussed her condition with a co-worker who had the same symptoms. She was terminated from National Beef on May 7, 2007.

On June 21, 2007, Dr. Bakleh sent a letter to claimant's attorney which provided in pertinent part:

This letter is a response to your request regarding Ms. Garcia. I saw Ms. Garcia for the first time on February 26, 2007 as per request of Dr. Arribas for infectious disease consultation. She was diagnosed to have Q fever and brucellosis. The patient had never been diagnosed to have any of these infections in the past.

The incubation for both illnesses is about three weeks. Ms. Garcia works at National Beef. She handles meat during her work, and I believe this is the route of acquiring the infection. There is no clear history of any other source of acquiring the infection.<sup>3</sup>

---

<sup>2</sup> It appears from the record that Mr. Briggs is a physician's assistant at the Western Plains Medical Complex Occupational Health Clinic.

<sup>3</sup> P.H. Trans., Cl. Ex. 1.

Conversely, the respondent provided a faxed document signed by Dr. Win M. Kyi to Danny Briggs which provided in pertinent part:

At your request I have reviewed the records on Isabel Garcia. As you noted in our conversation, according to the Mayo Clinic web site, Brucellosis infection is contracted by inhaling the bacteria in droplets from infected animals. As you are aware, Kansas has been declared brucellosis free for sometime as has all the surrounding states. In order for a person to contract the disease from working at one of the packing plants we would have to have cows infected with the bacteria. As the letter from Dr. David Vogt with the Kansas Veterinary Services states this is not likely. The most probable cause for such an infection is from ingestion of unpasteurized [sic] milk or cheeses which are found in countries such as Mexico. Also visiting these types of area where the infection is wider spread puts one at risk.

In addition to not having infected cattle in Kansas, the job which you stated that Isabel Garcia was doing did not put her in direct contact with the reproductive system of the animal or its blood, which could get into an open wound or come in contact with her at anytime.

It is more probable that your patient contracted this infection from some other source other than her employment with National Beef. This could be through travel to a foreign country, consumption of unpasteurized milk, consumption of cheese shipped in from a foreign country, or direct contact with an infected animal (sheep, dog, goat, pig or cow).

Also, this patient has been diagnosed with Q fever. This infection is also contracted from ingestion of contaminated unpasteurized [sic] dairy products.

After reviewing this information I had a phone conversation with Dr. Bakleh Infection Disease Specialist in Dodge City. He agreed given this new information that the infection was more likely contracted from some other source other than her employment at National Beef.<sup>4</sup>

Respondent further provided the letter it received from Danny Briggs which provided in pertinent part:

As per your request, I spoke with the veterinarians available at National Beef, Dodge City in regards to the brucellosis infection in Isabel Garcia. The head veterinarian at Dodge City National Beef plant referred me to the State of Kansas, Animal Health Department in Topeka. I spoke with Dr. Vogt and two of his associates via speaker phone in regards to brucellosis infection in cattle in Kansas and the likelihood of contracting the disease while working for National Beef. Dr. Vogt said the last known infection of brucellosis was in 1999 and that there has

---

<sup>4</sup> *Id.*, Resp. Ex. 1 at 1.

been no reports of brucellosis infection in any cattle within the State of Kansas or any cattle that has slaughtered within the State of Kansas since that time.

He also said that all states neighboring Kansas are doing the same testing that the State of Kansas is to keep brucellosis from entering into the packing plant area. He stated that it is very unlikely, in fact in his opinion it is almost impossible, to contract brucellosis in the current packing plants due to this information. He also stated that the only infectious parts, coming from the cattle at this point in time, is the reproductive tract, a fetus itself and milk. Since Ms. Garcia's job occurred after the washing of the carcass and after all of this has been removed from the carcass, Dr. Vogt stated that it is impossible for her to have gotten this just from handling the meat and the blood. The blood and the meat are not infectious.

It is in my opinion, after speaking with these gentleman [sic] at the Animal Health Department, that Ms. Garcia did not contract her brucellosis from here and that other avenues should be explored for her infectious disease.<sup>5</sup>

Dr. Kyi concluded claimant's infection was not contracted at work. Although Dr. Bakleh initially attributed claimant's infection to her work for respondent, the later e-mail from Dr. Kyi indicates that after they discussed the matter, Dr. Bakleh changed his opinion and concluded claimant's infection was more likely contracted from some source other than her employment with respondent.<sup>6</sup> Based upon the record compiled to date, the claimant has not met her burden of proof to establish that her brucellosis and Q fever was caused by her employment with respondent.

Claimant argues, in the alternative, that if Dr. Bakleh is considered to have changed his opinion that claimant did not contract brucellosis at work, the doctor's opinion regarding Q fever has not changed and she has met her burden of proof that she contracted that infection at work for respondent. However, it should be noted that both Dr. Bakleh and Dr. Kyi referred to both infections in the singular and presumably when both doctors concluded the infection was not contracted from claimant's employment they were referring to both infections. Moreover, contact with reproductive tracts and fetuses appear to be a principal source of the Q fever infection but claimant agreed that while performing her job she did not come into contact with either.<sup>7</sup>

---

<sup>5</sup> *Id.* at 3.

<sup>6</sup> Claimant's brief infers that Dr. Bakleh has returned to his original opinion but, if so, that is not part of the record and cannot be considered at this juncture of the proceedings.

<sup>7</sup> P.H. Trans., Cl. Ex. 4.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>8</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), as opposed to being determined by the entire Board when the appeal is from a final order.<sup>9</sup>

**WHEREFORE**, it is the finding of this Board Member that the Order of Administrative Law Judge Pamela J. Fuller dated July 16, 2007, is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of September 2007.

---

BOARD MEMBER

c: Kelly W. Johnston, Attorney for Claimant  
D. Shane Bangerter, Attorney for Respondent and its Insurance Carrier  
Pamela J. Fuller, Administrative Law Judge

---

<sup>8</sup> K.S.A. 44-534a.

<sup>9</sup> K.S.A. 2006 Supp. 44-555c(k).